

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Jeffrey	Team: Squad #8	CCRB Case #: 202001702	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/28/2020 3:30 PM	Location of Incident: Hollis Avenue and Francis Lewis Boulevard	Precinct: 113	18 Mo. SOL 8/28/2021	EO SOL 4/14/2022	
Date/Time CV Reported Mon, 03/02/2020 9:58 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/02/2020 9:58 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Thomas Lyons	4373	946517	113 PCT
2. POM Sean Hinchy	19916	962477	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DTS Thomas Lyons	Force: Detective Thomas Lyons used physical force against § 87(2)(b)	
B.POM Sean Hinchy	Discourtesy: Police Officer Sean Hinchy spoke discourteously to individuals.	

Case Summary

On February 28, 2020, at approximately 3:30 p.m., in the parking lot of the Dunkin Donuts located at 109-62 Francis Lewis Boulevard in Queens, § 87(2)(b) § 87(2)(b) was fighting with and punching a female minor individual identified only as § 87(2)(b). Det. Thomas Lyons and PO Sean Hinchy of the 113 Precinct, responded to the altercation, and Det. Lyons picked § 87(2)(b) up in the air, so that his head was higher than that of Det. Lyons's, and then brought him down on to the ground (**Allegation A: Physical Force**, § 87(2)(g)). As soon as § 87(2)(b) was on the ground, approximately 50 high school students began swarming him and screaming in his face. PO Hinchy told the students to, "back the fuck up," (**Allegation B: Discourtesy**, § 87(2)(g)). The officers then handcuffed § 87(2)(b) and transported him back to the 113 Precinct stationhouse. § 87(2)(b) was ultimately released to his mother's custody § 87(2)(b).

The investigation received body-worn camera (BWC) footage of this incident recorded by both Det. Lyons and PO Hinchy (Board Review 01 and 02). The investigation also obtained cell phone footage (Board Review 07).

Findings and Recommendations

Allegation (A) Physical Force: Detective Thomas Lyons used physical force against § 87(2)(b)

At the time of his CCRB interview, § 87(2)(b) § 87(2)(b) stood 5'4" tall and weighed 99.2 pounds. After § 87(2)(b) he and his friends arrived in the parking lot by the Dunkin Donuts located at 109-62 Francis Lewis Boulevard in Queens, § 87(2)(b) made fun of him and blew kisses at him (Board Review 03). § 87(2)(b) ran at § 87(2)(b) and was held back by his friends. § 87(2)(b) broke free and ran at § 87(2)(b)'s unidentified friend. § 87(2)(b) then blacked out. The next thing § 87(2)(b) remembered was hitting the ground on his back, and being flipped over and handcuffed by an officer, whom the investigation identified as Det. Lyons. § 87(2)(b) did not recall if he did anything to § 87(2)(b) or her friend. The officers did not say anything to § 87(2)(b) before or after § 87(2)(b) hit the ground. To his knowledge, the officers did not issue him any instructions prior to him being taken to the ground.

§ 87(2)(b) was then transported to the 113th Precinct stationhouse by Det. Lyons and PO Hinchy. In the police vehicle, Det. Lyons and PO Hinchy asked § 87(2)(b) what happened, stated they had been there the whole time, and said that they saw § 87(2)(b) break free of his friends who were trying to hold him back. § 87(2)(b)'s mother, § 87(2)(b) responded to the Precinct stationhouse and picked him up. As a result of being hit to the ground, § 87(2)(b)'s back and elbow hurt.

At the time of his interview Det. Lyons was 34 years old, stood 6'0" tall, and weighed 240 pounds (Board Review 05). According to Det. Lyons on February 28, 2020, at approximately 3:32 p.m., he and PO Hinchy were stationed in the vicinity of Francis Lewis Boulevard and Hollis Avenue to supervise school dismissal (Board Review 04). There had been numerous complaints about children fighting in this area and congregating in stores, disrupting their businesses.

Det. Lyons observed § 87(2)(b) whom Det. Lyons described as a "small, skinny" 14-year-old, attacking a female. Det. Lyons could not describe the female whom § 87(2)(b) was attacking. § 87(2)(b) was throwing "haymaker" punches at the female, was "whaling" on her, and seemed intent on hurting her. The female was backing up from § 87(2)(b) in response. Det. Lyons did not believe § 87(2)(b) to be under the influence of narcotics and did not have any prior interactions

with him. Det. Lyons did not know the nature of this specific dispute. There were approximately 50 other high school students watching the fight and recording on their cellphones.

Det. Lyons approached § 87(2)(b) from the side, avoiding the punches he was directing at the female, and reached one arm around § 87(2)(b)'s torso, lifting him up and then placing him on the ground. Det. Lyons did not remember how high he lifted § 87(2)(b)'s body. As soon as Det. Lyons placed his arm on § 87(2)(b) stopped throwing punches and did not resist. Det. Lyons stated that he lifted § 87(2)(b) off the ground because he "had to control him, because he was throwing punches."

After being shown PO Hinchy's BWC footage of the incident Det. Lyons stated that it had refreshed his recollection and he had lifted § 87(2)(b) to the height of his chest. Det. Lyons further stated that he was holding onto § 87(2)(b) and did not see any "velocity" in the footage. After the footage was replayed from 00:31 until 00:48 seconds, Det. Lyons maintained his testimony that there was no significant velocity with which § 87(2)(b) was brought to the ground. He stated that § 87(2)(b) was in his arms the entire time. Det. Lyons did not recall what part of § 87(2)(b)'s body contacted the ground.

Det. Lyons was informed that § 87(2)(b) provided his weight as under 100 pounds. Det. Lyons stated that he used the force he did because he was ducking § 87(2)(b)'s punches and that this was the "minimum amount of force necessary" to "diffuse the situation and place him under arrest."

At the behest of his DEA representative, Det. Lyons also noted that because of § 87(2)(b)'s wiry frame, he would be "struggling" if Det. Lyons tried to handcuff him standing up, and it was thus preferable to take him to the ground. Det. Lyons also noted that § 87(2)(b) did not resist once he was on the ground.

According to PO Hinchy, on February 28, 2020, at approximately 3:32 p.m., he observed § 87(2)(b) chasing a female and punching her in the face (Board Review 06). The female was backing away from § 87(2)(b) as he did this. PO Hinchy had no advanced knowledge that this fight was going to occur and was not familiar with the two combatants. § 87(2)(b) appeared to stand around 5'6" and weigh approximately 120 pounds, while the female he was attacking had about the same build. There were approximately 50 to 100 other high school students who were screaming, yelling, and watching the fight, but were otherwise not doing anything.

Det. Lyons grabbed § 87(2)(b) and performed a "controlled takedown." PO Hinchy did not remember whether Det. Lyons grabbed § 87(2)(b) with one or two hands. PO Hinchy did not know if Det. Lyons lifted § 87(2)(b) off the ground. PO Hinchy was unable to elaborate in any capacity upon what he saw when Det. Lyons conducted the controlled takedown. PO Hinchy did not know if Det. Lyons said anything to § 87(2)(b) before using the controlled takedown. After the takedown of § 87(2)(b) the demeanor of the other students changed, and they began screaming and getting closer to Det. Lyons.

PO Hinchy was shown a clip from his BWC footage. This did not refresh PO Hinchy's recollection of what Det. Lyons did during the controlled takedown. PO Hinchy had no independent recollection of Det. Lyons lifting § 87(2)(b) into the air or of the speed with which § 87(2)(b) was brought to the ground.

PO Hinchy's BWC footage shows that at 00:44 seconds Det. Lyons is depicted holding § 87(2)(b) by the back of his shirt before lifting him so that his head is above that of Det. Lyons (Board Review 01 and 02). At 00:45 seconds § 87(2)(b)'s leg is shown extended straight into the air as

PO Lyons brings his body to the ground rapidly. Det. Lyons BWC shows that at 00:51 minutes one of the male children, identified by the investigation as § 87(2)(b) begins charging at an unidentified female child wearing a yellow sweatshirt (Board Review 01 and 02). At 00:55 minutes PO Lyons grabs § 87(2)(b) with at least his left hand. The camera then becomes obscured by PO Lyons's clothing. At 00:59 minutes the frame becomes unobstructed, at which time § 87(2)(b) becomes visible on the ground.

Cellphone video provided by § 87(2)(b) shows Det. Lyons at the beginning of the video picking § 87(2)(b) up so that his head is above that of Det. Lyons and then bringing him down onto his left arm on the ground (Board Review 07).

The investigation submitted a request for § 87(2)(b) s § 87(2)(b) Report, but never received any results (Board Review 17).

Patrol Guide Procedure 221-01 states that the reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force (e.g. the nature and severity of the crime, actions taken by subject, duration of actions, Immediacy of perceived threat or harm to subject, members of the service, and/or bystanders, the size, age, and condition of the subject in comparison to the MOS, presence of hostile crowd or agitators, if the subject appears to be under the influence of stimulants/narcotics which would affect their pain tolerance or increase likelihood of violence, etc.). The Department examines the reasonableness of force viewed from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation (Board Review 08).

§ 87(2)(g)
§ 87(2)(b) 5'4" tall, and weighed 99.2 pounds, while Det. Lyons was 34 years old, 6'0" tall, and weighed 240 pounds. Det. Lyons BWC video also shows that Det. Lyons used force only four seconds after observing § 87(2)(b) punching the female student. Det. Lyons stated that he had to dodge § 87(2)(b) s punches when he approached § 87(2)(b) however, Det. Lyons also stated that as soon as he touched § 87(2)(b) he stopped throwing punches. § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Allegation (B) Discourtesy: Police Officer Sean Hinchy spoke discourteously to individuals.

At 01:00 minutes PO Hinchy's BWC video captures a group of approximately 30 to 50 minors in a circle around PO Hinchy and Det. Lyons. Approximately three to five of the minors are within one foot of the officers, with most of them being five or more feet away. PO Hinchy tells the group to, "Back the fuck up," after which the minors backed away from the officers (Board Review 01 and 02). PO Hinchy's BWC video does not capture audio before 01:00 minutes. At 01:10 minutes PO Lyons BWC video captures the sound of multiple minors screaming followed by an officer repeatedly shouting, "Back the fuck up" (Board Review 01 and 02).

In his interview with the CCRB PO Hinchy stated that after Det. Lyons brought § 87(2)(b) to the ground he was surrounded by the assembled minors (Board Review 06). The minors were yelling and screaming in Det. Lyons face. PO Hinchy assessed this as a dangerous situation, because Det.

Lyons had his back to a group of around 50 minors, and because PO Hinchy and Det. Lyons both have guns on their persons. PO Hinchy felt the need to make sure that PO Lyons was secure while he finished effecting the arrest, and to call for backup because he did not know how the situation was going to evolve. As a result, PO Hinchy used strong language to “gain control of the situation.” PO Hinchy did not recall if he told the high schoolers to, “back the fuck up.”

After being shown a clip of his BWC footage from 00:58 seconds until 01:02 minutes. PO Hinchy affirmed that he was the person telling the civilians to “back the fuck up.”

According to Det. Lyons there were approximately 50 minors present when he arrested § 87(2)(b) (Board Review 04). Det. Lyons did not hear PO Hinchy use any profanity during the incident.

In DAO-DCT Case Number: 2013-10143, it was stated that, “while police officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful enforcement situations.” The court specified that, “Specifically, profanity has been found to be permissible where the officer has resorted to such language in the heat of a highly dangerous situation” (Board Review 09).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).
- Det. Lyons has been a member-of-service for thirteen years and has been a subject in four complaints and three allegations none of which were substantiated. § 87(2)(g)
- PO Hinchy has been a member-of-service for four years and has been a subject in one complaint and one allegation which was not substantiated (Board Review 12).

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) rejected mediation (Board Review 13).
- A FOIL request was submitted to the NYC Comptroller’s Office of February 02, 2021, the office has not yet replied (Board Review 14).
- According to the Office of Court Administration (OCA), Isaiah § 87(2)(b) has no history of convictions in New York City (Board Review 15 and 16).

Squad No.: 8

Investigator: John Jeffrey
Signature

Inv. John Jeffrey
Print Title & Name

02/03/2021
Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 2/4/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date